

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5742 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF MAHOMED ARIF U VORA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR JITENDRA M PATEL for Petitioners

MR HL JANI for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/10/96

ORAL JUDGEMENT

1. The petitioner, since deceased, now represented by his legal heirs, filed this writ petition before this court and prayer has been made therein for quashing and setting aside of the order of the Dist. Magistrate dated 24-4-1985, annexure B, under which the licence for storing the kerosene has been cancelled. Further challenge has been made by the petitioner to the order annexure 'D' dated 7-10-1985 of the State Government made

in the appeal filed by the petitioner against the aforesaid order of the Dist. Magistrate.

2. The brief facts of the case are that, the District Magistrate granted licence no.24/84 in the month of September, 1984 to the petitioner for storage of kerosene upto 20,000 litres in the place of Raj Oil Depot. The petitioner has not produced the copy of licence which has been granted to him, before this Court. One of the condition of the grant of licence was that the petitioner shall produce rent receipt of the premises where the licence has been granted for storage of kerosene, upto 31st December, 1984. This licence has been granted under the order dated 15th September, 1984. Within the stipulated period, as granted to the petitioner, he has failed to produce satisfactory evidence of the authorised possession of the premises (land) or the rent receipt. One Smt. Fatimaben Siddiquebhai has raised an objection that the petitioner has no right, title and interest whatsoever in the land in question.

3. It is not in dispute that the licence has been granted by the authority for one year and if we take it from 31st December, 1984, it would have come to an end on 31st December, 1985. The petitioner's licence has been cancelled under the order dated 7-10-1985 as the condition of producing rent receipt or any other evidence of authorised occupation of the possession of the land at Survey No.3119 where the licence for storage of kerosene has been granted to him has not been fulfilled. Against this order, the petitioner filed an appeal to the State Government, but that too has been rejected. Hence, this Special Civil Application.

4. The learned counsel for the petitioner contended that the Dist. Magistrate passed the order dated 24th April, 1985 cancelling the licence of the petitioner without giving notice or opportunity of hearing to him. It has next been contended that the appellate authority has not considered the documents which have been filed by the petitioner before the said authority while challenging the order of the Dist. Magistrate. The counsel for the petitioner urged that the petitioner produced the documents, namely (i) Partnership deed of Gujarat Engineering Works, 1968, (ii) Partnership deed of Raj Oil Depot since 1976-1981, (iii) Document of dissolution of partnership, 1983 of Raj Oil Depot, (iv) Wholesale licence of Kerosene bearing No.50/81 and (v) Retail licence of kerosene bearing No.146/81.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. This writ petition has come up for admission before this Court and on 23rd October, 1985, rule was issued and ad-interim stay of the operation of the order has been granted. The interim relief, the stay of the operation of the order of the cancellation of the licence of the petitioner, would have been operative till the validity of the licence itself. The counsel for the petitioner, as stated earlier, has not disputed that the licence has been granted for one year and that period, if we take the commencement of the period of licence from 31st December, 1984, has come to an end on 31st December, 1985. The counsel for the petitioner made a statement before this Court that the application for renewal has been filed by the petitioner, but the fact remains that the interim relief could not have been operative beyond the period of the currency of the licence. It is a case where the petitioner has not disclosed in this Special Civil Application, the currency of the licence granted to him by the District Magistrate concerned, as well as the petitioner has also not produced on record the copy of the licence. There is no material on the record from which the court could have come to know the currency of the licence. It is the duty of the petitioner to fairly disclose all the facts and more so, where the question is of the cancellation of the licence, it has to be mentioned as a fact, the currency or the validity of the licence, so that the court could have passed appropriate order of grant of interim relief pending the disposal of the Special Civil Application restricting its operation till the period of the licence comes to an end or the day on which the order has been vacated, whichever is earlier. The petitioner has taken the benefit of the interim relief granted by this Court beyond the period of the currency or the validity of the licence itself. The petitioner has worked for all these years as a dealer for storage of kerosene though there was no valid licence in his favour after 31st December, 1985. In all the fairness, the petitioner should have disclosed this fact before this court either in the Special Civil Application or thereafter before the currency of the licence or the validity of the licence has come to an end or in all the eventualities, the petitioner should not have continued as a licensee for storage of kerosene thereafter. This conduct of the petitioner itself is sufficient for dismissal of this Special Civil Application. Whosoever approaches to this Court for seeking the relief under its extraordinary jurisdiction, should be fair and frank to the court. All the material facts have to be candidly disclosed so that the Court may take care how the

petitioner has to be protected. In fact, it is a case of concealment of the material facts by the petitioner which has resulted in continuance of the benefits of the interim relief for which otherwise the petitioner would not have been entitled beyond the period of currency/validity of the licence. This is clearly a case where the petitioner has abused the process of this court. The consideration of this writ petition on merits does not call for.

6. Be that as it may. I have considered the matter on merits also. I do not find any merit in either of the submissions made by the learned counsel for the petitioner. The licence has been granted to the petitioner subject to the specific condition that he will produce before 31st December, 1984 the necessary rent receipt of the land in question as well as any other evidence about authorised occupation/possession of the land. The land is of Survey no.3119. The counsel for the petitioner has not disputed that before 31st December, 1984 or even till the order passed by the District Magistrate cancelling the licence of the petitioner, the petitioner has not produced either the rent receipt of the land in question or any other evidence of the authorised occupation or possession thereon. The condition, to which the licence has been granted to the petitioner has to be satisfied and in case, it is not satisfied then the licence would have come to an end automatically on 31st December, 1984 and no order for cancellation thereof was required to be made. It was the obligation of the petitioner to fulfil the condition subject to which the licence has been granted otherwise the natural consequence thereof is the cancellation of the licence. The petitioner, as stated earlier, has not produced the necessary evidence as required by the authorities and subject to which condition the licence has been granted. In view of this fact, no notice or opportunity of hearing, before making of the impugned order by the Dist. Magistrate of the cancellation of the licence, is required to be given to the petitioner.

7. So far as the second ground is concerned, it is suffice to say that no additional evidence could have been produced by the petitioner before the appellate authority. Be that as it may. If we go by that evidence, it cannot be said that those documents are sufficient to prove and establish that the petitioner was in authorised occupation/possession of the land in question. The petitioner has to produce the rent receipt or any other evidence to show that he is in authorised

occupation or possession of the land, but that evidence which has been produced by the petitioner is hardly of any assistance to the petitioner on the question in issue. These are the documents wherefrom at the most, it may come out that Raj Oil Depot was the partnership firm, but the licence has been granted to the petitioner in his individual capacity and with the condition of producing the rent receipt or any other evidence to show the authorised occupation or possession of the land in question. That was the only evidence which petitioner should produce. The evidence other than of the nature as sought to be produced by the petitioner is of no consequence whatsoever. I have gone through the documents which have been filed by the petitioner before this court, but therefrom I do not find anything to show and establish that the petitioner has any right, title and interest or he is in authorised occupation or possession of the land in question.

8. In the result, this Special Civil Application fails and the same is dismissed. Interim relief granted by this court stands vacated. The petitioner is directed to pay Rs.1000/- by way of costs of this petition to the respondent no.1.

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